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12 Attorneys for Plaintiff SUCCESSFACTORS, INC.

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION
17

18 SUCCESSFACTORS, INC., a Delaware
19 corporation,

20 Plaintiff,

21 v.

22 SOFTSCAPE, INC., a Delaware
corporation; and DOES 1-10, inclusive,

23 Defendants.
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Case No. CV 08 1376 CW

**PLAINTIFF'S SUPPLEMENTAL
STATEMENT IN SUPPORT OF TEMPORARY
RESTRAINING ORDER**

Date of Filing: March 11, 2008
Trial Date: No date set

1 Since the filing of the Application for a Temporary Restraining Order on March 11, 2008,
2 counsel for Plaintiff SuccessFactors, Inc. (“SuccessFactors”) has had conversations with
3 Mr. Robert Goodin, of Goodin MacBride Squeri Day & Lamprey LLP, counsel for Defendant.
4 Plaintiff understands that Defendant is going to acknowledge that it created the Presentation, but
5 assert that it was intended as an internal document and that Defendant does not know how it came
6 to be disseminated. Defendant has offered to agree not to disseminate the document further while it
7 prepares an opposition to the TRO Application. Plaintiff submits this Statement to explain why it
8 does not believe that this offer is nearly sufficient to displace the need for immediate injunctive
9 relief.

10 1. Most importantly, mere agreement not to disseminate further is not enough, since
11 Defendants could continue to *sell* on the basis of the prior dissemination, repeating the falsehoods
12 and marketing by use of them. The Presentation was not circulated casually. It was e-mailed to
13 the particular decision makers at dozens of key prospects. *See, e.g.*, Bernshteyn Declaration ¶ 7
14 & Exhs. 2, 6. Those prospects are going to be the subject of competition today, tomorrow, and
15 next week. Defendant must be prohibited from continuing to misuse of the Presentation that was
16 previously sent. This is why Plaintiff’s Proposed Order requests an order prohibiting electronic
17 or oral communications that contain or repeat the false information in the Presentation (paragraph
18 (b)), and prohibiting *use* of the Presentation to disrupt Plaintiff’s relationships with prospective
19 customers (paragraph (c)). An “agreement” not to disseminate would not prevent Defendant from
20 continuing its unfair competition in interacting with customers. It also would not address
21 Defendant’s wrongful and unauthorized access of Plaintiff’s computer networks, which the TRO
22 should also restrain.

23 2. In addition, given that Defendant claims not to know how the Presentation it wrote
24 ever escaped to the outside world, an “agreement” by the Defendant not to circulate the document
25 further is cold comfort, indeed. If Defendant cannot even identify how the material was
26 previously disseminated, an offer to stop ongoing dissemination “voluntarily” cannot be trusted to
27 be effectual. A Court order is necessary.
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